IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 20195 of 2007(D)

PETITIONER:

K.SOMAN NADAR, AGED 58 YEARS,
S/O KUMARAN NADAR, "PUNARTHAM",
POOMKULAM, VELLAYANI P.O., TRIVANDRUM.

BY ADV. SRI.D.SAJEEV

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

3. THE SECRETARY,
KALLIYOOR GRAMA PANCHAYAT,
KALLIYOOR P.O., TRIVANDRUM.

4. THE VILLAGE OFFICER,
KALLIYOOR VILLAGE,
THIRUVANANTHAPURAM.

R3 BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
R1 R2 & R4 BY SRI.K.J.MOHAMMED ANZAR, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 20195 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COY OF SALE DEED DATED 28.10.04.

EXT.P2 : TRUE COPY OF THE APPROVED PLAN.

EXT.P3 : TRUE COPY OF THE PERMIT FOR CONSTRUCTION OF THE RESIDENTIAL HOUSE ISSUED BY THE 3RD RESPONDENT.

EXT.P4 : TRUE COPY OF THE JUDGMENT DATED 4.1.05 IN WP(C) nO.209 OF 2005 OF THIS HONOURABLE COURT.

EXT.P5 : TRUE COPY OF THE ORDER DT.20.04.04 IN WP(C) NO.12958/2004 OF THIS HONOURABLE COURT.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 20195 OF 2007

Dated this the 5th day of December, 2007

JUDGMENT

The grievance voiced by the petitioner is that the Village Officer is objecting to the removal of soil from the house plot where the petitioner intends to put up house on the basis of Ext.P3 building permit and Ext.P2 plan which have been issued to him by the Kalliyoor Grama Panchayat. A detailed counter affidavit has been filed by the 4th respondent Village Officer. At paragraph 6 of the counter affidavit it is stated as follows:

"It is also submitted that the petitioner's property lies in a higher level comparing to other properties. Therefore, soil has to be removed at a height of about 10 meters to level the land. But the petitioner has been trying to remove soil in large quantity for the purpose of sale and he has not obtained any permission for the removal of the soil to construct the residential house from the competent authorities. Finally it is submitted that the petitioner is having a pucca concrete residential house in Re-Survey No.404/24 of Kalliyoor Village."

2. Heard Sri.D.Sajeev, counsel for the petitioner, Sri.Rajendran Perumbavoor, counsel for the Panchayat and Sri.K.J.Mohammed Anzar, Government Pleader. Mr.Anzar submitted that the petitioner is a soil

extractor. His idea is to excavate large quantities of soil for purpose of sale. He pointed out that till this moment the petitioner has not obtained permit for excavation of soil from the residential building. To this submission, Mr.Sajeev would invite my attention to Exts.P4 and P5. He would further submit that the extent of the petitioner's plot where residential building is proposed to be constructed is only 10 cents.

Under these circumstances, I am of the view that relief can be given to the petitioner to the following extent:

Respondents 3 and 4 are directed to permit the petitioner to excavate/remove soil from his residential plot having 10 cents for the purpose of constructing a residential building as per Exts.P2 and P3. It is open to respondents 3 and 4 to ensure at all times that the petitioner does not excavate extra quantities of soil and soil is removed only to the extent necessary for leveling the ground for the construction of the house.

The Writ Petition is disposed of as above.

PIUS C. KURIAKOSE, JUDGE

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